IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4586 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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GALCHAR KETANKUMAR LAXMANBHAI MINOR THRO MOTHER PURIBEN

Versus

MAMLATDAR

Appearance:

MR KETAN SHAH for

MR TUSHAR MEHTA for Petitioner No. 1

MR IM PANDYA AGP for Respondent No. 1

MR HS MUNSHAW for Respondents No. 2, 3 & 4.

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 11/09/2001

ORAL JUDGEMENT

Rule. This petition has been filed for a direction to the respondent no. 1 - Mamlatdar, Talala, Dist. Junagadh, to issue caste certificate to the effect that the petitioner belongs to scheduled tribe category and also for quashing and setting aside the order dated

25-7-2001 passed by the Mamlatdar and for a direction to the respondents no. 2 to 4 to treat the petitioner as scheduled tribe candidate on the basis of the documents produced by the petitioner for the purpose of admission to M.B.B.S. course.

2. It is stated that the petitioner belongs to "Rabari" community hailing from Gir, Barda and Alech areas of Junagadh District and that community has been declared to be scheduled tribe community. As per the notification of the President of India dated 29-10-1956 the persons belonging to Rabari community who were residing in various NES in Gir, Alech and Barda Forest area were declared to be the persons belonging to the scheduled tribes. After such persons migrated for various reasons, they are required to be declared as scheduled tribe persons and the concerned revenue authorities are required to give such certificate on the basis of the various documents which were in possession of the various departments of the State Government. For that purpose, the person concerned has to show that he was permanent resident of NES in the aforesaid forest area and the petitioner has produced necessary documents like "Maswadi" receipts which were prepared by the Forest Department. The leaders of "Rabari" community filed several representations before the State Government pointing out that though "Rabari" community hailing from Gir, Barda and Alech Forest areas are declared to be scheduled tribe persons and they are facing difficulties in getting caste certificates. One-man Commission known as "Malkan Commission" headed by Shri J..M. Malkan, who was appointed as commission and he was a retired Joint Director of Social Welfare Department, . The said Commission was required to prepare a report after verifying the list of such persons given by the leaders of "Rabari" community for entitlement of the caste certificate. Malkan Report has submitted to the State Government and the State Government started process of issuing caste certificate to be known as "Vigat Darshak Cards" on the basis of the entry made in the Malkan Commission Report and that was considered to be conclusive proof to show that such persons belong to schedule tribe community.

3. The petitioner had appeared in 12th Standard Examination in science stream in May 2001 and succeeded by obtaining 70.2 % marks in the examination and wants to take admission in M.B.B.S. course in the reserved quota for scheduled tribe. The mother of petitioner applied before the respondent no. 1 for issuance of caste certificate on 2-6-2001 and it was stated that the

maternal uncle and maternal grandfather of the petitioner are residing in Gir, Barda and Alech area. The petitioner applied for issuance of caste certificate on earlier occasion. The names of the maternal uncle and maternal grandfather of the petitioner have appeared in the voters' list of Talala Legislature Constituency, 1984. The maternal uncle as well as other relatives of the petitioner are still residing at Gir, Barda and Alech area and hence the petitioner belongs to scheduled tribe. Therefore, the petitioner is entitled to the caste certificate. The petitioner also applied for admission in M.B.B.S. course in reserved quota of scheduled tribe community and the petitioner has also made endorsement on the admission form that he will submit caste certificate in his name on or before 7-7-2001.

4. The Commissioner of Adijati Vikas, Gandhinagar informed the leaders of Scheduled Tribes community vide letter dated 17-5-2001 that caste certificate will be issued to the scheduled tribe community belonging to the Rabari caste hailing from Gir, Barda and Alech area.

5. The Mamlatdar by his order dated 25-7-2001 rejected the application of the petitioner holding that the petitioner has not accompanied any evidence to show that he himself or his mother-father were permanent resident of Gir, Barda and Alech area on the date of notification dated 29-10-1956.

6. Learned counsel for the petitioner submitted that this Court in the Letters Patent Appeal No. 1670/99 and other cognate matters rendered the judgment on 31-8-2000 and observed as under :

> "We direct that in case the Vigat Darshak Card is produced before the concerned Committee and the Mamlatdar, they may proceed to decide the Applications of the candidates claiming to be treated as members of scheduled tribe and in taking up such exercise, they may consider such Vigat Darshak Cards as a relevant material and the entries made therein to be correct unless there is any ground or material to disbelieve the same and find those entries to be wrong or false and such case has to be decided on its own facts and the applicant will be under an obligation to furnish the necessary materials, as may be required, besides the Vigat Darshak Card itself."

7. On the basis of the aforesaid observations of the Division Bench of this Court, learned counsel for the

petitioner contended that though Vigat Darshak Card is not itself conclusive proof. But if such card has been produced before the authority concerned and unless and until any material has been shown or produced before the authority concerned, the entries made in such card are wrong. It is the duty of the authority concerned to consider the entries made in such cards to be genuine. In the present case, the petitioner has produced this card along with other seven documents including the Forest Form No.27 Ticket of the rate of Maswadi No.10070 name Jetha Hira Janvadia Round dated 7-8-52 Sanvat Year 2009 of maternal grand father of the petitioner and Forest Form No. 27 of rate of Maswadi No. 44550 name Meraman Jeta Round Devalia dated 20-8-1955 Sanvat Year 2011. The Mamlatdar or the competent authority has erroneously ignored these two relevant documents which conclusively show that the maternal grand father and maternal uncle of the petitioner were residing at the relevant place and time in that area and still they are residing there. As such, the Mamlatdar has committed manifest error on the face of the record by ignoring the relevant piece of evidence though the same was on record.

8. On the contrary, learned A.G.P. submitted that the material on record produced by the petitioner has already been considered by the Mamlatdar and competent authority and the Mamlatdar has not committed any error.

9. I have considered rival contentions of the learned counsel for the parties. It appears that the petitioner has produced Vigat Darshak Card containing the entries which are required to be considered and treated as genuine unless any material has been produced by the State to show that the entries are false or incorrect. It does not appears from the impugned order that any material was produced by the State to show that the entries made in the Vigat Darshak Card were false and incorrect. As such, it was obligatory on the part of the Mamlatdar to presume and hold that the entries made in Vigat Darshak Card were genuine and correct and on the basis of the entries made in Vigat Darshak Card itself entitles the petitioner for issuance of caste certificate. Moreover, the petitioner has filed other necessary evidence including documents at Sr. 2 and 3 which clearly show that the petitioners maternal grand father and maternal uncle at the relevant time were permanent resident of Gir Barda and alech forest area. Besides that, the petitioner has produced other evidence to show that the family of the petitioner is still residing in the aforesaid area. It is not disputed by the learned A.G.P. that the petitioner does not belong

to "Rabari" community. From the material on record, it appears that the petitioner's maternal uncle and maternal grand father were residing at the relevant time at Gir Barda and Alech forest area and still they are residing there.

10. In the facts and circumstances of the case and considering the relevant material on record and submissions made by the learned counsel for the parties, it appears that the Mamlatdar has not considered the material on record and he has erroneously rejected the petitioner's application. Therefore, this petition deserves to be allowed and the impugned order dated 25-7-2001 deserves to be quashed and set aside.

11. Accordingly, this petition is allowed and the impugned order dated 25-7-2001 passed by the Mamlatdar is quashed and set aside and the matter is sent back to the Mamladar and the Mamlatdar concerned is directed to decide the petitioner's application a fresh in accordance with law after giving reasonable opportunity of hearing to him, within a period of two weeks from the date of presentation of a certified copy of this order or receipt of writ of this Court whichever is earlier.

12. Learned A.G.P. makes a statement that one seat would be kept vacant for admission to M.B.B.S. course at M.P. Shah Medical College, Jamnagar till the petitioner's application is decided by the Mamlatdar as per above directions. In case any adverse decision is taken by the Mamlatdar, the Mamlatdar shall communicate the his decision by sending a copy of the order by registered Post A.D. to the petitioner and one seat for admission to M.B.B.S. course at Jamnagar Medical College would be kept vacant for a further period of one week.

13. Rule is made absolute to the aforesaid extent, with no order as to costs. D.S. is permitted.

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/JVSatwara/